

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

\$22,361.83 U.S. FUNDS SEIZED FROM  
VARIOUS ACCOUNTS and 5,019,000  
IRAQI DINAR,

Defendants.

NO. CV-11-0317-EFS

**ORDER DENYING CLAIMANT  
SMITH'S MOTIONS, REQUIRING  
CLAIMANT SMITH TO FILE AN  
ANSWER, AND DIRECTING THE  
CLERK'S OFFICE TO SET A  
SCHEDULING CONFERENCE**

Before the Court in this civil forfeiture action are Claimant L. Daniel Smith's Motion for Intervention of Right, ECF No. [25](#), and Motion to Dismiss, ECF No. [26](#).<sup>1</sup> After reviewing the record and relevant authority, the Court is fully informed. For the below given reasons, the Court denies Mr. Smith's motions, requires Mr. Smith to file an answer within twenty-one days of this Order, and directs the Clerk's Office to set a scheduling conference.

**A. Background<sup>2</sup>**

<sup>1</sup> Mr. Smith's motions were supported by memoranda exceeding Local Rule 7.1(f)'s limitations. The Court accepts the overlength pleadings but will strictly enforce the Local Rule page limits in future filings.

<sup>2</sup> When reviewing a verified forfeiture complaint for sufficiency, the Court assumes to be true those portions of the Complaint that

ORDER ~ 1

1       Following the execution of a federal search warrant on July 13,  
2 2011, the United States of America<sup>3</sup> filed a Verified Complaint for  
3 Forfeiture In Rem ("Complaint"), ECF No. 1, on August 26, 2011, seeking  
4 forfeiture of the seized Defendant currency. The Complaint alleges that  
5 the seized Defendant currency is subject to forfeiture under 18 U.S.C.  
6 § 981(a)(1)(C) because they are proceeds derived from the unlawful  
7 importation of chemicals from Canada used to make a water purification  
8 product sold by Mr. Smith in violation of 18 U.S.C. § 545. Accompanying  
9 the Complaint is the 1) judicially-issued search warrant for Mr. Smith  
10 and Karis DeLong's residence in Spokane, Washington, and 2) affidavit of  
11 F.B.I. agent DaLi Borden submitted in support of the search warrant.  
12 Agent Borden's affidavit details the evidence proffered to support the  
13 belief that Mr. Smith and Ms. DeLong smuggled sodium chlorite into the  
14 United States to make a water purification product, i.e., Miracle Mineral  
15 Solution (MMS), that is sold through their Project Green Life business,

16 \_\_\_\_\_  
17 "contain sufficient allegations of underlying facts to give fair notice  
18 and to enable the opposing party to defend itself effectively," but does  
19 not afford the presumption of truth to allegations that "simply recite  
20 the elements of a cause of action." *Starr v. Baca*, 652 F.3d 1202, 1216  
21 (9th Cir. 2011) (setting forth the Federal Rule of Civil Procedure  
22 12(b)(6) standard); see Fed. R. Civ. P. Suppl. R. G(8) (allowing  
23 forfeiture claimant to seek dismissal of forfeiture action under Rule  
24 12(b)).

25       <sup>3</sup> As discussed below, the Court may refer to Plaintiff United  
26 States of America as the "United States" for shorthand purposes.

1 in violation of § 545, and that evidence of such smuggling could be found  
2 at their Spokane residence. The proffered evidence included controlled  
3 purchases of MMS and regulatory inspections of companies doing business  
4 with Mr. Smith and Ms. DeLong.

5 On September 27, 2011, the United States filed a Motion for Warrant  
6 of Arrest In Rem, ECF No. [2](#). Pursuant to Federal Rule of Civil Procedure  
7 Supplemental Rule ("Supplemental Rule") G(3)(b)(I), the Court directed  
8 the Clerk's Office to issue a Warrant of Arrest In Rem, ECF Nos. [3](#) & [4](#),  
9 because the identified tangible property, i.e., the suspected unlawfully  
10 derived currency, is in the United States' possession, custody, and  
11 control following the execution of the search warrant.

12 On October 3, 2011, the United States sent Mr. Smith and Ms. DeLong  
13 copies of the Complaint and Warrant of Arrest via regular and certified  
14 mail. ECF Nos. [6](#) & [7](#). This mail was returned undeliverable. ECF No.  
15 [13](#) at 2. On October 14, 2011, the United States again attempted to mail  
16 the documents via regular and certified mail. ECF Nos. [8](#) & [9](#). These  
17 October 14, 2011-dated notices cautioned Mr. Smith and Ms. DeLong that  
18 1) a claim must be filed within thirty-five days of the notice's date,  
19 i.e., by November 18, 2011, and 2) an answer must be filed twenty-one  
20 days after the verified claim is filed. The certified mail return  
21 receipt for this second mailing showed that it was received on October  
22 15, 2011. ECF No. [13](#) at 2.

23 On November 21, 2011, thirty-eight days after the October 14, 2011  
24 notice, Mr. Smith filed a Motion for Immediate Recovery of Illegally  
25 Arrested Funds and Property in Violation of Due Process of Law, along  
26 with an Affidavit of Facts by Specific Negative Averment, ECF No. [11](#). Mr.

1 Smith' motion, which was served on the assigned United States attorney,  
2 identified the Defendant currency, but did not identify Mr. Smith's  
3 interest in the Defendant currency and was not signed under penalty of  
4 perjury as required by Supplemental Rule G(5)(a)(I)(C). See 28 U.S.C.  
5 § 1746 (setting forth the penalty-of-perjury signatory requirements).  
6 The United States requested that the Court strike Mr. Smith's motion.  
7 ECF No. [13](#).

8 On January 4, 2012, the Court granted the United States' motion to  
9 strike, denied Mr. Smith's motion, and declined to construe Mr. Smith's  
10 filings as a timely claim. ECF No. [17](#). But because Mr. Smith is  
11 proceeding pro se and his motion and affidavit were filed three days  
12 after the claim deadline, the Court provided Mr. Smith with an  
13 opportunity to file a motion explaining why equity required the Court to  
14 allow him to file a claim. *Id.* Mr. Smith filed such a motion on January  
15 31, 2012. ECF No. [18](#). On February 28, 2012, the Court granted Mr.  
16 Smith's motion and accepted ECF No. 18-[1](#) as a timely claim. ECF No. [23](#).

17 On March 20, 2012, Mr. Smith filed the instant motions to dismiss  
18 and intervene. ECF No. [25](#) & [26](#). Briefing ensued.

## 19 **B. Authority and Analysis**

20 Mr. Smith seeks dismissal of this forfeiture action under Federal  
21 Rule of Civil Procedure 12(b) and also seeks intervention of the United  
22 States. Mr. Smith asks the Court to dismiss this civil forfeiture action  
23 because 1) the United States of America lacks standing, 2) the Court  
24 lacks jurisdiction over this civil forfeiture action and is the improper  
25 venue, 3) a civil forfeiture action is unripe, and 4) the United States  
26 has unclean hands because it violated the First, Fourth, Fifth, Eighth,

1 and Fourteenth Amendments to the U.S. Constitution and therefore may not  
2 seek forfeiture of the identified currency. The Court addresses each of  
3 these arguments below.

4 First, the Court finds for purposes of civil forfeiture actions in  
5 federal court the terms "United States" and "United States of America"  
6 are synonymous,<sup>4</sup> and Congress conferred the authority to bring civil  
7 forfeiture actions to the United States, i.e., the United States of  
8 America. Because the United States of America is the proper plaintiff,  
9 the Court denies Mr. Smith's motion to dismiss in this regard and his  
10 motion to have the United States intervene in this civil forfeiture  
11 action.

12 Second, because the seized property was located in the Eastern  
13 District of Washington, this Court has *in rem* jurisdiction under 28  
14 U.S.C. § 1355. "The district courts shall have original jurisdiction,  
15 exclusive of the courts of the States, of any action or proceeding for  
16 the recovery or enforcement of any fine, penalty, or forfeiture,  
17 pecuniary or otherwise, incurred under any Act of Congress." 28 U.S.C.  
18 § 1355(a). And a forfeiture action may be filed in "the district court  
19 for the district in which any of the acts or omissions giving rise to the  
20 forfeiture occurred. . . ." 28 U.S.C. § 1355(b)(1)(A). The Complaint  
21 alleges that Mr. Smith, a resident of Spokane, deposited U.S. currency  
22 from MMS sales into bank accounts located in Spokane, Washington, and  
23 also had the seized Iraqi dinar located at his Spokane residence.  
24 Accordingly, the Court finds the Eastern District of Washington, within

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26 <sup>4</sup> As indicated in footnote three, the Court may refer to the  
"United States of America" as the "United States" for shorthand purposes.

1 which Spokane is located, is a proper venue for this forfeiture action.  
2 Mr. Smith's motion to dismiss is denied in this regard.

3 Third, this Court, an Article III court, was given the authority to  
4 hear this forfeiture action by a valid Congressional act. Mr. Smith  
5 contends the courts that have previously addressed Congressional quorum  
6 and voting issue arguments have not sufficiently articulated the basis  
7 for their decisions finding Title 18 to be a valid United States Code  
8 provision. This Court also elects not to engage in detailed analysis  
9 because the U.S. Supreme Court has recognized that Title 18 of the United  
10 States Code was enacted into positive law. *U.S. Civ. Serv. Comm'n v.*  
11 *Nat'l Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 550, n.1 (1973)  
12 (recognizing that Title 18 of the U.S. Code was enacted into positive  
13 law); *see also U.S. v. States*, 242 Fed. Appx. 362, 362 (7th Cir. 2007)  
14 (stating simply in regard to an appeal involving Title 18 quorum and  
15 voting-issue arguments, "This case is unbelievably frivolous").  
16 Accordingly, the Court finds it has jurisdiction to hear this civil  
17 forfeiture action pursuant to 18 U.S.C. § 981, a section contained in  
18 Title 18. Mr. Smith's motion to dismiss is denied in this regard.

19 Fourth, Mr. Smith contends that the allegations in the Complaint are  
20 not ripe because he has yet to be indicted. The Court acknowledges that  
21 at first glance the ability of the United States to pursue a civil  
22 forfeiture action without first bringing an indictment appears at odds  
23 with the Constitution's protections. However, through 18 U.S.C § 981,  
24 Congress allows the United States to file a civil forfeiture action in  
25 advance of a criminal prosecution. Under § 981(g), a civil forfeiture  
26 action may be stayed by the court upon motion of either the United States

1 or the claimant if there is a "related criminal investigation." *Id.* §  
2 981(g)(1)(2). This demonstrates that Congress envisioned that a civil  
3 forfeiture action may precede a criminal indictment. *See also id.* §  
4 981(a)(1)(A)-(D), & (F) (utilizing "violation" language rather than  
5 "conviction" language). Mr. Smith's motion to dismiss is denied in this  
6 regard.

7       Lastly, Mr. Smith's unclean-hands arguments are not persuasive to  
8 this Court. First, at the time the tracking device was placed on Ms.  
9 DeLong's vehicle in January 2011, law enforcement reasonably relied on  
10 valid Ninth Circuit case law, *see United States v. McIver*, 186 F.3d 1119,  
11 1126 (9th Cir. 1999) (finding law enforcement's conduct of placing a  
12 tracking device on the defendant's vehicle in a public setting did not  
13 constitute a seizure under the Fourth Amendment). Accordingly, because  
14 law enforcement's actions were consistent with then binding Ninth Circuit  
15 case law, the evidence obtained as a result of the tracking device is  
16 still admissible in court, even though that case law is no longer valid  
17 in light of *United States v. Jones*, 132 S. Ct. 945 (2012). *See Davis v.*  
18 *United States*, 131 S. Ct. 2419, 2423-34 (2011) (holding that "searches  
19 conducted in objectively reasonable reliance on binding appellate  
20 precedent [that is later overruled] are not subject to the exclusionary  
21 rule"). Second, the Court finds no legal support for Mr. Smith's  
22 argument that the Food and Drug Administration's failure to respond to  
23 his inquiry and/or otherwise notify him that he was under criminal  
24 investigation is a violation of the Fifth Amendment thereby barring this  
25 civil forfeiture action. Third, Mr. Smith's argument that this civil  
26 forfeiture action violates the Eighth Amendment's prohibition against

1 excessive fines is premature. The Court must make this determination  
2 after determining whether forfeiture of the seized assets is appropriate.  
3 *See, e.g., Austin v. United States*, 509 U.S. 602, 622-23 (1993)  
4 (remanding to the lower court to determine whether the awarded forfeiture  
5 was excessive). And fourth, accepting as true the Complaint's  
6 allegations, the Court finds it states a forfeiture claim as to the  
7 identified currency and does not violate the asserted First and  
8 Fourteenth Amendment rights. Accordingly, Mr. Smith's motion to dismiss  
9 is denied in these regards.

10 Finally, consistent with the Court's January 4, 2012 Order, ECF No.  
11 [17](#), the Court finds that the Complaint satisfies Supplemental Rule G(2)'s  
12 pleading requirements.

### 13 **C. Conclusion**

14 In summary, the Court finds the United States of America (United  
15 States) is the proper party to bring this civil forfeiture action, the  
16 Court has jurisdiction and is the proper venue, and the Complaint  
17 survives Mr. Smith's motion to dismiss. Accordingly, Mr. Smith is to  
18 file his answer within twenty-one days of this Order; a failure to timely  
19 file an answer may result in the dismissal of his claim. A scheduling  
20 conference will be set; the notice setting this scheduling conference  
21 will require counsel and Mr. Smith to confer regarding the matters listed  
22 in the notice.

23 For the above-given reasons, **IT IS HEREBY ORDERED:**

24 1. Claimant Smith's Motion for Intervention of Right, ECF No. [25](#),  
25 is **DENIED**.

26 2. Claimant Smith's Motion to Dismiss, ECF No. [26](#), is **DENIED**.



